

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL**
5 **REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS**
6 **OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS**
7 **OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A**
8 **RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL**
9 **OR RES JUDICATA.**

10 At a stated Term of the United States Court of Appeals for the Second Circuit, held at the
11 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York,
12 on the 18th day of September, two thousand six..

13 Present: HON. ROGER J. MINER,
14 HON. JOSEPH M. McLAUGHLIN,
15 HON. ROBERT A. KATZMANN,
16 *Circuit Judges.*

17 _____
18 UNITED STATES OF AMERICA,

19 *Appellee,*

20
21 - v -

No. 05-6524-cr

22
23 NUMAN MAFLAHI, also known as RAFIQ TALEBA,

24
25 *Defendant-Appellant.*

26 _____
27 Appearing For Appellee: DAVID C. JAMES, Assistant United States
28 Attorney (Jo Ann M. Navickas, Assistant United
29 States Attorney, *on the brief*), for Roslynn R.
30 Mauskopf, United States Attorney for the Eastern
31 District of New York, Brooklyn, NY

32 Appearing For Defendant-Appellant: ALAN DEXTER BOWMAN, Newark, NJ

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2 Appeal from the United States District Court for the Eastern District of New York
3 (Gershon, *J.*).

4 **ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,**
5 **AND DECREED** that the judgment of the district court be and hereby is **AFFIRMED**.

6 Following a jury trial, defendant-appellant Numan Maflahi was convicted of one count of
7 making false statements, in violation of 18 U.S.C. § 1001. He now appeals his sentence of, *inter*
8 *alia*, 60 months' imprisonment, the maximum permitted under his crime of conviction. We
9 previously remanded this case for the limited purpose of permitting the district court to decide
10 whether to resentence Maflahi pursuant to *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005).
11 *See United States v. Maflahi*, No. 04-3990-cr, 2005 U.S. App. LEXIS 10496 (2d Cir. 2005). The
12 district court having elected not to do so, we now review Maflahi's sentence for reasonableness.
13 *See United States v. Fernandez*, 443 F.3d 19, 26-27 (2d Cir. 2006).

14 Maflahi's sentence, while the maximum permitted for his statutory offense, was
15 considerably below his Guidelines range of 210-262 months. For essentially the reasons given
16 by the district court, we do not find the sentence to be substantively unreasonable.

17 Maflahi also appears to suggest that the district court committed procedural error by
18 failing to consider all the factors set forth in 18 U.S.C. § 3553(a) on remand.¹ It is true that, on
19 remand, the district court issued only a brief order with no discussion. However, at the original

¹Maflahi also seems to suggest that it was somehow improper for the district court to take into account at sentencing facts not charged in the indictment or proven to the jury. Far from being improper, such consideration is required of the sentencing judge. *See Crosby*, 397 F.3d at 113. Maflahi does not assert any inaccuracy in this judicial fact-finding.

1 sentencing, the district court – believing, even before United States v. Booker, 543 U.S. 220
2 (2005), that the mandatory application of the Sentencing Guidelines might be unconstitutional –
3 stated that, after considering “all relevant information,” it would impose the same term of
4 imprisonment regardless of the status of the Guidelines. Moreover, on remand, Maflahi’s
5 counsel put forward no argument for how consideration of the § 3553(a) factors should change
6 the appropriate outcome. Under these circumstances, we find no reason to doubt that the able
7 district court adequately considered the § 3553(a) factors both in the original sentence and on
8 remand, and will not accept Maflahi’s apparent invitation to “prescribe [a] formulation a
9 sentencing judge will be obliged to follow” to demonstrate that she did so. *See Crosby*, 397 F.3d
10 at 113.

11 Having considered all Maflahi’s other arguments and rejected them, we **AFFIRM** the
12 judgment of the district court.

13
14 FOR THE COURT:
15 ROSEANN B. MacKECHNIE, CLERK
16 By:

17
18 _____
Oliva M. George, Deputy Clerk